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NOTES OF THE WEEK

Taking a Chance

The man who appeals against sentence always takes the chance of an increase, unless indeed he has received the maximum sentence allowed by law. However, he may think there is an element of luck about it, on the basis that one court may prove either more or less severe than another, and decide to try his fortune and hope for the best. Sometimes the result is such as to surprise him agreeably. This may have been the state of mind of one Eigird, who, on January 14, in the Court of Criminal Appeal, had a sentence of eight years' preventive detention for larceny quashed and was bound over to come up for judgment within two years. The Lord Chief Justice said it was not surprising that the appellant had received such a sentence at quarter sessions, but the Court of Criminal Appeal had received a letter from the man's employer saying he had worked well and could return to his job: it also appeared that he had been drinking when he committed this petty offence, and the Court would take a chance with him and bind him over. He must understand that if he started drinking and committed any further criminal offence during the next two years he would receive a sentence of eight years' preventive detention or more.

Artificial Insemination by Donor

A.I.D., as it has come to be called, involves moral and social questions upon which it is fitting that leaders of religious denominations should express themselves clearly, and the pronouncement by the Archbishop of Canterbury is opportune. There can be no doubt that even if it is not adultery from the legal point of view, human insemination from a donor who is not the husband has most of the elements of adultery from the moral and social standpoint. It strikes at the Christian idea of marriage, places offspring in what may well prove to be an unhappy position and may undermine true family life. Whether this is a matter for the criminal law is open to doubt, as was realized by the Archbishop, but it certainly seems to call for legislation.

Adultery is a sin, but not a criminal offence, and since artificial insemination by donor is akin to adultery it would no doubt be well that it should be dealt with on similar lines. If it were deemed in the eyes of the law to be adultery, a husband who agreed to it would be conniving and condoning, with the consequences thereby involved. If he were deceived, he would have his remedy.

The position of a child so conceived is that he is not a child of the marriage, and he has no father in the true sense, though his mother's husband may choose to acknowledge him as if he were his own. If the husband had been deceived and refuses to have anything to do with him, the question arises whether a donor is to be treated like any other putative father and be the subject of an affiliation order. We believe though we do not know, the identity of the donor is usually concealed.

It is evident that a number of difficult questions would have to be answered before legislation could be undertaken, and that such legislation would not be easy to frame. Nevertheless, we think the case for legislation of some kind has been made out. For this the position of the child is of the utmost importance.

Smoking in Homes and Hostels

Present policy tends to the grant of considerable freedom to young people living in approved probation homes and hostels. This is in contrast to the way in which most institutions were managed 50 or 60 years ago. It is not surprising that in those days many young offenders were reluctant to go to homes or hostels and that there were many absconders. Today the whole atmosphere has changed for the better, but it still remains necessary that there should be some restrictions on the activities of the inmates, for their own good as well as for the general comfort of the small community which they constitute.

In the case of the younger people who are not old enough or experienced enough to realize always what is best for them, there must be guidance and sometimes rules of prohibition. The Home Office has recently been considering the question of smoking in approved probation hostels and homes in

the light of scientific opinion about the possible relation between smoking and lung cancer. A circular has now been issued suggesting that managing committees of approved probation hostels and homes should consider what they can do to ensure that residents for whose care and training they are responsible, are advised of the risks involved in smoking, and to secure that they do not acquire (or, if they have already acquired it, continue) the habit of smoking before they are old enough to be capable of measuring the risks and making up their minds in the matter. Possibly prohibiting smoking in the home or hostel by those under 16 years of age may be thought necessary.

Two Wrongs Don't Make a Right

Human nature being what it is, it is inevitable that on the roads bad or inconsiderate driving by one person all too often provokes others into doing things which they would not otherwise attempt. We have seen a report of a case in which a solicitor defending a motorist charged with driving without due care and attention expressed the opinion that slow moving cars are the greatest menace on the roads today. The facts were that the defendant was driving in a line of traffic and that he pulled out to overtake a car in front. In the course of this manœuvre he collided with a car coming in the opposite direction. The defendant's explanation was that the car in front was travelling slowly but that its driver accelerated just as he, the defendant, began to overtake. Without this acceleration by the other vehicle, the defendant said, he would have had ample room to overtake and get back into his proper line of traffic. As it was he had to brake and he then skidded on the wet road and the collision resulted. Without the skid, he said, he could have got back behind the vehicle he was seeking to overtake.

It is, of course, very irritating to be held up behind a slow moving vehicle, the driver of which seems to be admiring the countryside, or thinking out some abstruse problem—doing anything, in fact, except taking interest in getting to the end of his journey. Such drivers seem always to have an undying affection for the crown of the road (or possibly they have no idea how far their near side is from the edge of the road), but it should be well known to their victims that they have also a rooted aversion from being overtaken and that to try to overtake them is the one and only way of reminding them that their vehicle is fitted with an accelerator. With these facts in mind the overtaking driver must remember that the onus is on him to be sure, before he pulls out to overtake, that he can complete the manœuvre in safety and that he is not justified in pulling out otherwise merely because he can no longer bear to continue his journey at the snail's pace set by the car ahead of him. It is true that the Highway Code urges "do not accelerate when being overtaken" and the driver who does so may well contribute to an accident, but the primary responsibility is on the one who seeks to overtake, and he must allow for the dog-in-the-manger attitude of mind which leads the overtaken driver to accelerate.

Road Accidents: Cost of Medical Treatment of Injured

An article in the *Evening Argus*, Brighton, of January 4, 1958, calls attention to certain provisions in the Road Traffic Acts, 1930 and 1934, of which many drivers may be unaware.

In the Act of 1930, s. 36 (2) makes provision for the payment by insurance companies, and by owners of vehicles, who make other permitted arrangements to cover third party risks, as required by s. 35 of that Act, of amounts reasonably incurred by hospitals in treating persons injured in road accidents. The liability arises where any payment is made by the company, or the owner, in respect of the death of or bodily injury to, any person arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access and the person who has so died or been injured has to the knowledge of the insurance company or owner received treatment at a hospital, whether as an in-patient or out-patient, in respect of the injury so arising. The total amount which is required to be so paid to a hospital is not to exceed £50 per person treated as an in-patient or £5 per person treated as an out-patient. The expression "expenses reasonably incurred" is defined in the section.

A further provision is included in s. 16 of the Act of 1934. This makes the person using a motor vehicle at the time of any event which leads to a person being injured as a result of, or arising out of, the use of that vehicle on a road liable to pay a fee of 12*s*. 6*d*. for emergency treatment immediately required and given to the injured person by a doctor or at a hospital. The user must also pay, if the doctor has to travel more than two miles to give the treatment and to return to the place from which he came, an amount equal to 6*d*. for every complete mile and additional part of a mile travelled in excess of the two miles. The user is liable to make this payment whether the injury was caused by any fault of his or not; and s. 16 (3) provides that if the injury arose through the wrongful act of some other person, the amount so paid by the user is to be treated for the purposes of any claim to recover damages by reason of that wrongful act, as damage sustained by the user.

The article to which we have referred states that in thousands of cases every year insurance companies meet hospital bills for people involved in road accidents and that "this part of the Road Traffic Act is no minor financial consideration for the Government."

Careless Driver Given Licence to Drive a Bus

The *News Chronicle* of January 6, 1958, reports the case of an omnibus driver who was fined £10 and disqualified for one year for driving his bus without due care and attention and was also fined £10 for failing to stop after an accident. He had to pay £6 15*s*. costs in addition.

Our readers will have concluded, from the year's disqualification, that this was not his first conviction. In fact it was his fourth. The safety, and at times, the lives of passengers in public vehicles depend on the conduct of those who drive those vehicles, and the Road Traffic Act, 1930, s. 77, makes it unlawful for any person to drive a public service vehicle on a road unless he is licensed for the purpose by the commissioners of the traffic area in which he lives. What strikes us as unusual in this case is that it appears from the report that the traffic commissioners in question were fully aware when they granted a licence to this driver that he had been convicted of careless driving. The convictions were stated to have been in 1952, 1953 and 1955, and the last of the three led to his being disqualified for six months.

The report in the *News Chronicle* states that a headquarters official of the commissioners said "He gave his record, but they were private motoring offences, and they were careless driving which does not convey an awful lot. The commissioners did get certain information from local police."

There may be some explanation which is not apparent to us, and we do not know the whole of the story. We do consider, however, that some very

strong reason would be required to justify licensing a man to drive an omnibus who had three convictions in four years for careless driving, the last of which led to his being disqualified for six months. The safety of passengers in particular and the public in general requires that those who drive public service vehicles should have good driving records.

Drivers Must Concentrate on Their Job

Three of the essential requirements in a driver of motor vehicles are care, courtesy and concentration. No driver can be certain of exercising the first two if he neglects the third, and it is all too apparent, when one is about on the roads today, how often drivers fail really to concentrate on their job. An example which has come recently to our attention is that reported in *The Western Morning News* of December 31. An 18 year old motor-cyclist was fined £2 for driving without due care and attention. According to the report he admitted that he was more concerned with fastening up his leggings to keep dry than with watching where he was going. As a result he collided with a *stationary* pedal cycle, knocking the rider off his cycle. For this piece of gross carelessness he may well consider that he was lucky to be dealt with so leniently. In our view the advocate who appeared for him did not help his client's case by stating, in explaining that the defendant was attempting to fasten a loose strap in case it caught in the chain, " Thousands of other cyclists do the same thing every day of the year." If this is true the sooner such drivers realize that the proper thing to do is to stop for such a purpose the better it will be for them and for other road users.

Wheels One Two Three?

At a local inquiry last year the council of a county borough were proposing amongst other things to provide a road expressed to be dedicated for use by " cycles." A question was raised whether the road could be used by motor bicycles, the noise of which might be objectionable to occupiers of adjoining buildings, or whether the local authority had merely pedal bicycles in mind. Their solicitor considered that once the road was made it would not be feasible to prevent its being used by motor bicycles as well as pedal bicycles, but said that sidecars and other three wheeled vehicles were to be excluded by posts placed at each end. Counsel representing certain trading interests thereupon raised the question of the form of dedication to be followed. Was the word " cycle " to be used? He pointed out that there was no fundamental reason why the word should exclude from its meaning vehicles with four wheels or more, whilst admitting that popular usage had done so. There are, however, now upon the market motor cars taking up no more space than a bicycle with side car. These are sometimes called bubble cars, and sometimes marketed under various trade names embodying the word " car " as a syllable. Some of them have three wheels and some four, the two back wheels being placed close together presumably for the purpose of a better grip upon the road than is given by a single back wheel. Which, if any, of these things are " cycles "? A vehicle called a " tricycle " has for many years been recognized; indeed it is older than the bicycle. We raised a similar question when a private member's Bill was introduced for what is now the Parish Councils Act, 1957. Unfortunately no notice was taken in Parliament of what we said about the ambiguity in that Bill, with the result that parish councils now, apparently, have power to provide parking places for bicycles whether propelled by human power or by mechanical means, and for motor tricycles of whatever form, but not for the old fashioned tricycle propelled by its rider or the little tricycles commonly ridden by young children. Let it be conceded that the bubble car with two small wheels placed close together at the back is outside the power, however illogical this is, but what is the position of a three-wheeled bubble car? It may be that the point will not arise in practice, because it would be too absurd to suppose that a parking place which might not be used for children's and other pedal tricycles might be used for a motor tricycle, but the power to provide parking accommodation for motor tricycles is there in terms.

We were also asked towards the end of last year what we thought was meant by the expression " autocycle " in an insurance policy. There seems no linguistic reason to suppose that this is anything different from a " motor cycle," whatever is meant by the latter term, but the context of the policy seemed to us to indicate that it might mean a pedal bicycle with a motor attachment. Now that terms like " autocycle," " motor cycle," and so forth, are finding their way into Acts of Parliament and other formal documents, it seems desirable that some attempt should be made to define their meaning: otherwise there may be troublesome litigation at the cost of private persons.

By origin the word " cycle," used as the name of a wheeled vehicle, is a vulgarism much like " bus " and " phone." It is inferior to " bus," because the latter (having no meaning in itself) can denote nothing except the vehicle known to Parliament as an omnibus. The word " phone," although it has, like the word " cycle," a meaning of its own, resembles " bus " in that it can hardly be misunderstood. (So far as we know, it has never been applied to any of the other sound producing instruments, such as a gramophone or hydrophone, into whose English names it has been combined.) The word " cycle," however, simply means a wheel. Its accepted use in standard English is for a period of time, but it could etymologically be used properly enough to denote any contrivance which ran on wheels, or even on one wheel. In practice it has been confined to two vehicles, namely, the bicycle and tricycle, but of these it may mean either—unless there is something in the context by which its meaning can be limited. It is well enough in the family circle to say that a school boy rides his cycle, because everybody knows that he has a bicycle. There is equally no harm in using the word " cycle " as a verb, if anybody cares to do so. The trouble arises when it is used as a noun, to denote some object which is not defined by the known circumstances.

Diminished Responsibility

A distinguished prison medical officer who was asked in cross-examination whether his evidence meant that the prisoner, charged with murder, was normal mentally, replied that he had never said of any murderer that he was normal. Most people would agree that a man who commits murder is not normal, in the ordinary sense, when he commits such an act, but of course that has little to do with the question of responsibility, which involves medico-legal considerations of considerable difficulty.

The Homicide Act, 1957, introduced into the law relating to murder the question of diminished responsibility which, as the Lord Chief Justice observed in *R.* v. *Spriggs* (*The Times*, January 15) was taken from the law of Scotland. Section 2 (1) of that Act refers to " abnormality of mind " such as substantially to impair the accused's

" mental responsibility " for his acts or omissions.

In *R.* v. *Spriggs, supra,* the appellant appealed against his conviction of capital murder. It was submitted, in the Court of Criminal Appeal, that in dealing with the defence of diminished responsibility, the trial Judge had not sufficiently directed the jury. The Lord Chief Justice, who delivered the judgment of the Court of Criminal Appeal, said the appellant knew quite well what he had done and why he had done it. As to the summing up, Lord Goddard said the Judge had gone through the medical evidence meticulously, the members of the jury having been supplied with the terms of s. 2 (1) of the Homicide Act, and he told the jury that it was for them to decide whether the appellant was suffering from such abnormality of mind as to impair his mental responsibility. It was not for a Judge, said the Lord Chief Justice, where Parliament had defined a particular state of things, as they had here, to redefine or attempt to define, the definition. It was a question of fact in every case for the jury.

The appeal was dismissed.

More About the Magistrates' Courts Act, 1957

There is no doubt that if the new procedure introduced by the Act of 1957 is to effect the saving of attendance of witnesses which is hoped for defendants must play their part by filling in the necessary forms and returning them to the courts. We are indebted to a correspondent who writes to tell us of the practice adopted at two courts with which he is concerned. To encourage defendants to co-operate our correspondent uses a business reply folder form. This form he has adapted so that it " combines an acknowledgment of summons and other documents with the form recommended by the Home Office for use in connexion with the new procedure under the above Act." If the defendant completes this form he has only to fold it as indicated by dotted lines and post it. He incurs no expense for postage. Possibly this will induce some defendants to complete and return the form who would not otherwise bother to do so, but we are not entirely happy at the thought of the cost of postage of *the acknowledgement* in these cases falling on public funds instead of on the defendant whose breach of the law, accepting for the purposes of the argument that he is guilty, has led to the proceedings being taken. But there are arguments on both sides on this point, and we do not propose to pursue this aspect of the matter further.

We note that the form of acknowledgement to which our correspondent refers reads as follows: " I hereby acknowledge receipt of summons(es) notice, statement of facts and notice of alleged previous convictions," and we should like to comment on this. The form of notice of intention to cite previous convictions in the schedule to the 1957 rules is signed on behalf of the chief constable and the defendant is asked to notify the chief constable if he disputes the correctness of the record. There is, deliberately, nothing in this notice to suggest that it comes from the court. It is important that defendants should not be misled into thinking that, in any event, the court knows about these previous convictions before the case is heard. It seems to us that if a defendant receives from the court, before he has made any statement about his attitude to the case, a form asking him to acknowledge the receipt of a notice of alleged previous convictions he will assume that the court, at that stage, knows all about his previous convictions. We are sure that our correspondent would agree that it is most undesirable that defendants should be misled into making this wrong assumption, but we cannot see how it can be avoided with the acknowledgement in question in its present form.

Crime Circulations and Clearing Houses

In 1949 a Working Party of Chief Constables under the chairmanship of H.M. Inspector of Constabulary, Lt.-Col. Sir Frank Brook, D.S.O., M.C., was set up to consider and report on the system of crime circulations and clearing houses in England and Wales. The Working Party recommended (and in doing so followed earlier recommendations of a Committee in 1933, except as to nomenclature) that regional criminal record offices should be established and should maintain certain records which the Working Party detailed, including classified fingerprint collections, complete indexes of all persons wanted for crime, method indexes and photograph indexes. It was also recommended that the regional offices should issue periodical reports and notices about criminals or suspected criminals.

The proposed regional offices were to be established at New Scotland Yard (which also contains the Central Criminal Record Office) and at the headquarters of the Birmingham, Bristol, Cardiff, Lancashire and West Riding of Yorkshire police forces.

Estimates of cost envisaged £38,000 capital outlay and an annual expenditure rising to £160,000 when the recommended services were fully developed. This annual cost was equivalent, on the basis of the authorized police strength in 1953 of 51,000 to £3 2*s.* 8*d.* per officer: it would, of course, have been reduced by 50 *per cent.* by police grant.

Home Office Circular 123/52 to police authorities stated that the financial situation of the day precluded bringing the Working Party recommendations fully into effect immediately (words with a familiar ring) and further that the Secretary of State proposed to discuss the financial implications with the local authority associations. Sub-committees of the associations were set up and we understand that at least one recommended that costs of the regional offices should be met by the forces over the whole country in proportion to establishment. Up to the present, however, no action has been taken by the Central Committee on Common Police Services: indeed we are not aware that any agreed recommendation from the County Councils Association and the Association of Municipal Corporations has yet been submitted to that committee.

This inaction may well have been due to the fact that the scheme is incomplete; although a certain amount of progress has been made, closely but not exactly following the Working Party's recommendations. Offices are in being for the south-east at New Scotland Yard, for the Midlands at Birmingham, for the north-east with the West Riding constabulary and for the north-west with the Lancashire constabulary. In addition an office at Bristol is in course of being established.

It is possible therefore that before long the whole of the two countries may be covered. Under the present system the forces linked to each regional office pay for its upkeep on an agreed basis, usually per head of authorized establishment. When the network is complete it may well be that the whole of the costs will be dealt with through the Common Police Services Committee. It will then be interesting, after allowing for changes in the value of money, to see how accurately the estimates of the Working Party were able to foreshadow the costs of their proposals.

MUSIC LICENCES AND THE USER OF PREMISES

By R. H. HARBOUR, *Clerk to the Justices, Yeovil, Crewkerne and Wincanton*

The various enactments in force in different parts of the country relating to the licensing of premises for public music and dancing are broadly similar in their requirement that such a licence is necessary only if there is some sort of regular or habitual user of the premises. When the nature and extent of the user is difficult to determine doubts may arise as to the side of the statutory fence on which a particular case falls. It is proposed to examine the question of the user of premises in relation to the requirements of part IV of the Public Health Acts Amendment Act, 1890, and to consider what guidance can be obtained from the available case law on the subject.

Part IV deals with the regulation of places ordinarily used for public dancing or music, or other public entertainment of the like kind. Subsection (1) of s. 51 provides that after the expiration of six months from the adoption of part IV a house, room, garden, or other place, whether licensed or not for the sale of wine, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind without a licence for the purpose being first obtained from the licensing justices of the licensing district concerned. Subsection (5) enacts that any house, etc., kept or used for such purpose without a licence shall be deemed a disorderly house, and the occupier or rated occupier shall be liable to a daily penalty not exceeding £5. The remaining subsections contain provisions which need not be considered here.

It is clear from the preamble that part IV applies to premises "ordinarily used" for public music, etc. and subs. (1) enacts that the premises shall not be "kept or used" for such purposes without a licence. There must be habitual user, or several instances of user (*Marks* v. *Benjamin* (1839) 9 L.J.M.C. 20; 4 J.P. 44). This was an action of debt to recover the penalty imposed by s. 2 (1) of the Disorderly Houses Act, 1751, for keeping a place of public entertainment not licensed according to the provisions of the Act. The defendant kept a tavern where persons of the Jewish persuasion were in the habit of frequenting on the celebration of their marriages, when a large room in the house was generally used by them and their guests for the purpose of dancing and other amusements; also that in two or three instances the room had been let by the defendant to persons who had given balls and concerts there, to which visitors were admitted by tickets or by paying money at the door. The defendant did not participate in the profits and he never derived any benefit from the meetings, except the money paid for the use of the room. It was held upon these facts there was evidence of the keeping open of the house by the defendant and that the Judge was wrong in directing a non-suit.

In *Badger* v. *James* (1934) 78 Sol.J. 768, a publican provided a wireless set for the amusement of himself and his family. The set was operated by one of his servants and was in such a position that programmes were audible in a greater or lesser degree to his customers. It was held on the particular facts of the case that the recorder was entitled to hold that what took place on the premises did not amount to such a degree of continuous or regular user as would justify a conviction.

In *Brearley* v. *Morley* (1899) 63 J.P. 582, the conviction of a licensed victualler for keeping and using a room in an hotel for public singing and music without a licence was quashed. The room was used by the public and the appellant had kept a piano there for some time. Pianoforte music and music and singing of the same nature took place there and was performed by customers, who were able and willing to play and sing, for the entertainment and amusement of themselves and their friends. The room was thus used on Saturdays and sometimes on Fridays. The appellant did not pay any of the performers or encourage them to perform. It was held there was no habitual user of the room by the customers for the purpose of any public entertainment, and that the appellant did not keep or use the room for any of the purposes forbidden by the Act.

The mere occasional use of premises cannot make them a place "kept or used" for public entertainment, etc. There must be more than one instance of user, and the question may arise as to the minimum number of occasions or days that can be said to amount to habitual user. In the case of *Shutt* v. *Lewis* (1804) 5 Esp. 128 (also cited as *Strutt* v. *Lewis*) a room not usually appropriated to public dancing or music had been, on one occasion, let for eight days during which period it was used for dancing and music. It was held that this was not a keeping of the house for that purpose. It may be noted, however, that subs. (11) of s. 51 of the Act of 1890 empowers justices to grant a licence to "keep or use" premises for any purpose within the meaning of the section "for any period not exceeding 14 days," notwithstanding no notices shall have been given. It may be argued, therefore, that premises may be used during a period of 14 days, or less, in such a manner as to attract the necessity of a licence; if it were not so it would be unnecessary to make this statutory provision for the grant of licences for a period of 14 days or less.

If the music is merely a subsidiary part of the entertainment provided on the premises a licence is not necessary; it must form a substantial part of the entertainment. In the case of *Quaglieni* v. *Matthews* (1865) 29 J.P. 439, the defendant was convicted of unlawfully keeping a place for public music and dancing without a licence. He occupied the building for circus entertainment, and in this connexion provided a band of six instrumentalists. A curious sentence appears in the evidence of one of the witnesses concerning the performance of this band. He deposed that it played "composed" music. It is difficult to conceive music in any other form, or that six instrumentalists could simultaneously extemporize with harmonic success. This band aided the performers at the circus in their several acts. It did not play in the intervals, and ceased playing when the performance ended. The Court remitted the case to the justices as they had not found whether the music was merely subsidiary or formed a substantial part of the public entertainment. If the music was merely subsidiary the justices ought not to have convicted; but if it was a principal or essential part of the entertainment the conviction would be right. It was a question of fact for the justices; but if they thought that the fact of there being any music or dancing brought the case within the statute their decision was wrong.

In the case of *R.* v. *Tucker* (1877) 41 J.P. 405, the defendant was charged under the Disorderly Houses Act, 1751. The evidence showed that he kept a skating rink and that a band of six performers played selections of music while

people skated. The rink was open to the public for some hours during the day, but the band played between 7 *p.m.* and 10 *p.m.* The jury found him guilty on certain other counts but not guilty on the count of keeping and maintaining a place for public music without a licence. Cockburn, C.J., expressed the opinion that he ought to have been convicted on that count.

In *Amusement Equipment Co. Ltd.* v. *McMillan* (1941) 85 Sol. J. 333, the appellants occupied an "amusement arcade" in which they had installed a coin-operated automatic gramophone and 54 amusement devices. Members of the public had operated the gramophone daily for a period of some months and it was stated to be in continuous use between 6 *p.m.* and 10 *p.m.* The volume of music was greater than that necessary merely to entertain the person who inserted the coin, and the gramophone was said to have an advertising value in that it attracted persons to the premises. The justices rejected a submission by the appellants that as there were 54 amusement devices and only one gramophone the music formed a subsidiary, not a substantial, part of the entertainment provided on the premises. They also rejected a further submission by the appellants that music was not provided by them for the entertainment of the public but that they merely provided means for individual members of the public to provide music for their own entertainment. The justices distinguished the cases of *Quaglieni* v. *Matthews* (*supra*) and *Brearley* v. *Morley* (*supra*) and convicted the appellants. As the facts of this case are peculiarly within our knowledge (it was a case stated by the Yeovil justices) it might not be out of place to record that whilst the justices found that the user of the premises for the purpose of public music was sufficient to bring the premises within the provisions of the statute the impression gained at the hearing was that the case was rather near the borderline; a view apparently shared by the appellants since they decided to appeal, although it might also be said that the consequences of the conviction were to them a matter of some concern. Humphreys, J., however, said that there was "ample evidence" to justify the justices' conclusions, from which it would appear that the user of the premises was sufficient to bring the case well within the provisions of the statute.

In *McDowell* v. *Maguire* (1954) 118 J.P. 555, the prosecution was under s. 16 of the London County Council (General Powers) Act, 1915, three informations having been preferred against the respondent alleging that on three dates which were not consecutive he used his public house for public music without a licence first being obtained from the London county council. Section 16 of the Act of 1915 relates to ". . . premises being kept or used for public dancing singing music or other public entertainment of the like kind . . .", but by an amending Act an offence is committed even if there is only one performance. This case, therefore, is of little help where the question under consideration is whether there has been regular or habitual user of the premises.

Border-line cases will continue to provide their difficulties but the tests to be applied in all cases where regular or habitual user of the premises must be established are those indicated in the cases we have considered.

COURT RECORDINGS IN NEW ZEALAND

[CONTRIBUTED]

The fact that the Wokingham (Berks) magistrates' court have been experimenting with a recording machine awakens interest in this subject. It is interesting to find that successful experiments have been made in New Zealand with the mechanical recording of proceedings in a magistrates' court. This dominion may now claim credit as having the first British court to go on record.*

Experiments in the use of sound equipment have been conducted in the Wellington magistrates' court since 1952 and initial tests have led to the present final results.

A Wellington court room is now operating these recordings as a pilot project for a period of 12 months in order that a full appraisal can be made as a solution to the present difficulties of noting evidence in magistrates' court proceedings.

The equipment used is five microphones and precision recording machines and it supersedes the laborious and time-wasting method of typewriting and magisterial note taking. The aim of this installation is to achieve a complete, accurate and verbatim record of proceedings which can be kept if desired and transcribed by a typist at any time.

The need for an alternative method to the present system of noting evidence in magistrates' courts in New Zealand has been increasingly apparent since the passing of the Summary Jurisdiction Act and the consequent increase in the number of indictable cases dealt with summarily by magistrates.

When evidence was typed the speed at which the business of the court was conducted was governed by the speed of the typist. In other cases, the magistrate was required to take notes in longhand. There had also been instances of appeal cases in which the Supreme Court had found the notes of the lower court proceedings inadequate. The type of record proposed would be complete for the purposes of appeals.

Commenting on the installation of this equipment, Mr. S. T. Barnett, the New Zealand Secretary of Justice, said that this progressive development would make a great deal of difference in the running of the court.

For some time the New Zealand Department of Justice has been trying to find an apparatus which would give them the results which they desired. Mr. Barnett felt that with the present equipment they had found it.

Once the equipment is operating smoothly, the Departmental plan will be to extend it to other New Zealand courts, including the Supreme Court, and will eventually spread throughout New Zealand. When the New Zealand Department of Justice first mooted the project, inquiries were made in other Commonwealth countries to see if there was any experience with recording machines installed in courts of law. The only instance which came to light was an experiment in London a couple of years ago; when the investigating committee ruled that the apparatus, then available, was unsuitable for court or Parliamentary work. In addition the New Zealand Broadcasting Service provided invaluable advice and assistance.

The machine used in Wellington has been designed specially for court recording and is the Dictaphone Co. Ltd.'s

* But *see* 115 J.P.N. 354.

Dictacord. It is two linked recording machines, each taking 30 minutes' evidence on plastic, opaque, Dictabelt, which cannot be erased, altered, or tampered with. Being "double barrelled," so to speak, this means that there is no loss of continuity while Dictabelts are changed and further that transcription of the recording can if necessary be produced while the court is still sitting.

Under the present routine, the hard-working court registrar has to operate the machine. In front of him are controls to isolate, energise or cut any of the five microphones around the court—near the magistrate, the prisoner's dock, the witness box, prosecuting counsel and defence counsel.

The question is, will Britain follow New Zealand's example ?

ADMINISTRATIVE INTEGRATION OF HEALTH AND WELFARE SERVICES

[CONTRIBUTED]

A steadily increasing number of county and county borough councils are considering the desirability of integrating their health and welfare services. One of the latest to decide to merge the two services is the Leicestershire county council, and it has recently been disclosed that the Surrey county council also have the question under consideration.

The importance of ensuring the closest possible integration of domiciliary health services provided under part II of the National Health Service Act, 1946, and the welfare services provided under part III of the National Assistance Act, 1948, was stressed by the Guillebaud Committee. The report of that Committee refers, however, to integration at committee level only. Whether the Committee intended to suggest a closer administrative link is not disclosed, but it seems reasonable to suppose that they favoured anything which might bring the two services into closer relationship.

The Guillebaud Committee, though concerned with costs generally, were primarily concerned in this respect with the overall efficiency of the two services, in the interests of those whom the services are intended to benefit. That, after all, is the measure by which all public services should be assessed. The question to be pursued should always be: what will best serve the interests of the community ?

And it is on this question that there seems some room for doubting whether an amalgamation or fusing of the health and welfare *committees* is so very important. So long as there is the closest *administrative* integration of the two services there might well be advantage in (as it were) political control by separate committees. A separate committee for the welfare services could help avert any chance that those services, if brought under the control of the medical officer of health, might become of secondary significance, subordinated to the interests of the health services. The fact has to be faced that (say) the death of one person from small-pox has a greater impact upon the public imagination than a lifetime of suffering of hundreds of handicapped persons.

Furthermore, it is easier in practice to provide effective machinery to break down artificial barriers between committees than between departments. At member level there is always ultimately the will of the full assembly, enforceable against tendencies on the part of committees to consider themselves units, separate and apart from the local authority as a whole. Departmental barriers are not so easily seen from member level and, however powerful the clerk may be as co-ordinator in chief, the fact remains that he has no authority over other chief officers, each of whom (necessarily) has a personal interest not only in the survival but in the expansion of his department.

The mere existence in the country of so many separate welfare departments is no evidence of the validity of the arrangement. Separate welfare departments exist largely because, upon the coming into operation of the National Assistance Act nine years ago, they were already in existence as public assistance departments, and were thus available and peculiarly fitted to take over the new duties. In other words, the question whether or not to set up a separate department for welfare purposes had been answered before it arose. So, too, very largely, was the question whether or not to appoint a welfare committee. The Act of 1948 presupposed, one might say, that a welfare committee would need to be set up. Every local authority shall establish a welfare committee, the Act said, but the welfare committee is not of the class of statutory committees such as, for example, the education committee or indeed the health committee. The Act provides that " in the interests of the efficient discharge of all or any of the authority's functions " a welfare authority may, with the consent of the Minister of Health, refer their welfare responsibilities to some other committee (National Assistance Act, 1948, s. 33, and sch. 3, part I, para. 7 (1)).

It is to be questioned how many authorities actively addressed their minds to this possibility in 1948. There seems to have been no difficulty then (there certainly is none now) about getting the necessary ministerial consent to enable the health committee to deal with welfare functions.

The present arrangement for administrating welfare services over the greater part of the country has emerged, in typically British fashion, out of what was there previously. That, some of us may think, was fundamentally bad, because the break-up of the old poor law—regarded in 1948 as of paramount importance—could hardly be helped on by employing, to a greater extent than absolutely necessary, the same local administrative machinery.

On the precept that the fewer the committees and the fewer the departments the better for effective co-ordination and good administration, there is then a *prima facie* case for examining whether both welfare and health committees and welfare and health departments should be amalgamated. There is not the space here to deal with these questions more exhaustively. It may be observed, however, that one of the most powerful arguments for setting up a new department, or for retaining an existing one, is that only thereby can there be maximum concentration upon the executive tasks to be achieved. But there is a point, admittedly never easy to determine, when an existing department becomes too big for effective control by one chief officer. It may well be therefore (against what has been said so far) that where the medical officer already has a large administrative machine

under his direction no positive advantages would accrue, merely from enlarging his empire to embrace the welfare sphere. But this can only really be true of the very largest authorities; and even where, of practical necessity, there must be separate departments there must none the less be close integration.

There seems, in any case, little doubt, surely, that this whole question is one eminently suitable for O. & M. attention. It will be interesting to learn in due course whether the O. & M. team being employed jointly by the Berkshire and Oxfordshire county councils and the Reading and Oxford county borough councils to investigate in the first instance the health, welfare, and children's services of the four authorities, reach any conclusion on this important topic of the moment.

A CHILD'S GUIDE TO LOCAL GOVERNMENT—I

My dear son,

It has occurred to me that when you grow up you may be minded to embark on a career in public life and I am writing to you now, while the mood is on me, to give you a little advice which you will doubtless disregard.

There are certain advantages in a public life job. It is generally indoors. With a little effort, you can create the impression that you have dedicated your life to the service of your fellow-men, and this can lead to many well-paid and interesting appointments. Mere incompetence will not jeopardize your position, though petty dishonesty, overlooked in the business world, may hold you back for a time. I don't know whether you will want power and the opportunity to influence the lives of others; being a sentimentalist, I hope you will not; but if you do, public life gives great scope for this sort of activity.

To prepare yourself, a public school education is still desirable but no longer, you will be relieved to hear, essential. A University degree (preferably obtained at Oxford or Cambridge) is necessary for the better permanent appointments. If you stand a reasonable chance of doing well academically at the University, strive for a first class honours degree. If this success seems likely to be unattainable, concentrate on the award of a blue for cricket or rugby football. This also may, however, be beyond your powers. If so, we shall have to think again and perhaps decide that you are more fitted for industry or commerce. But you may, despite your failure to do well either at books or play, still want to pursue a public career. For such persons the House of Commons has been instituted.

Now you are young enough to react with some distaste from the idea of becoming a member of Parliament. "But, father," I can hear you say, "that's *politics*." So it is, my boy. But you can learn, if not to overcome your natural revulsion, at least to live with it. Don't despise politics; it's bread and butter to many of your father's friends and not a few have jam today. To get into politics is easy; to stay in and make a respectable living is difficult. First steps count. Anyone can put his foot on the bottom rung of a ladder and the shorter ladders are easy to climb. But the ladder you choose must be a long one, leading somewhere worthwhile. I haven't the money to put you on an escalator.

Now, for those who are without wealth or social position, the two best forms of apprenticeship for political employment are trade unionism and local government. If you turn out to be naturally clever with your hands as well as your brain, there is little point in sending you to a University. But we must not fly too high and it will be safer to assume that your aptitudes will lead you towards a profession rather than a trade. Membership of a local authority will then be the first rung of your ladder. In these letters I shall therefore confine myself to a few remarks on local government which may help you to mount the more swiftly.

You must first join either the Conservative or the Labour Party. The only other alternatives of any political consequence are the Liberals and the Communists but, since you are ambitious to succeed, I cannot at this moment of writing advise you to throw in your lot with either of these. Of the two major parties you must make your own choice; both are healthy and vigorous and the variations of political opinion in each are so many that any personal idiosyncracies you may have can find a resting place in either. It is, of course, better not to have personal idiosyncracies or, indeed, any firm political opinions at all, but most of us have our queer little ideas which need satisfying. But don't parade them. Your political opponents will have long memories and will later, when you are successful, employ research teams to excavate your youthful impetuosities. Anything you say at any time may be used, out of context, as evidence. So beware.

Join then, when you are about 16 years of age, the junior branch of the Conservative or Labour Party. If you attend two consecutive meetings, you are likely to find yourself elected to the committee and then appointed as its chairman. There are two rules for success in manoeuvring for these positions: the first is to find the middle of the road and to stick to it, not forgetting to give the impression to those on the right and the left pavements that you secretly sympathize with them; and the second is to learn to speak tolerably well and shortly. By speaking shortly you will win the approval both of those who are impatiently waiting for you to sit down so that they can speak at length, and of those who never speak at all and who attend because of the social advantages or entertainments which follow.

During this early formative period of your political education you will learn to dislike your political opponents to the point of hatred. This is inevitable. Only later will you discover that your own interests are best served by pretending to like them personally.

By the time you are 21, you should have established yourself as a "coming man." It is impossible to stress too much how important is the achieving of this classification. Alternatives are to become known as "brilliant" or "sound" but neither is as good. The first implies untrustworthiness and the second suggests some measure of dullness. A "coming man" is pleasantly equivocal. It can mean all things to all people and will be variously but favourably interpreted. You will soon be asked if you are prepared to stand for The Council. Since the official question will come from a senior member of the party, you should, in replying, indicate your own feeling of immaturity while "conscious of the great honour." Do not, however, say you have no time to spare. You will not be believed and you will be using the excuse which the senior members have themselves been using for years to avoid this particular chore (as it seems, now, to them). Allow yourself to be persuaded. It's never too early to start and you may have to face a couple of defeats before you succeed.

It is most likely that the council will be that of your city, town, rural district or county. But it may be that of your rural parish. If so, you had better accept the invitation although it will not itself take you very far up your ladder. Nevertheless, by an ambitious young man like yourself, membership of a parish council is not to be scorned. It will help you towards election for a higher authority and, at the moment, it is fashionable. The cult of the return to the village and the simple life is seemingly indestructible and you might as well be in on it.

Whatever council you are standing for, you will have to circulate an election statement saying who you are and why the electors should vote for you. Probably others of your party will be also seeking election at the same time and there may be a common statement for all of you. If you can avoid this, do so. Association with other candidates is likely to do you more harm than good. None of their glory and all of their shame (if they have any) will be reflected on you. You will probably be pressed to have your photograph reproduced. Think twice about this. Everyone's face is, so to speak, a double-edged weapon. If you can put out an individual statement, you will find yourself in an apparent dilemma. You will want to say that certain things ought to be done (which will obviously cost money) and you will at the same time want to say that your purpose is to reduce the rates. Do not be puzzled by this. The dilemma is real but it is universally ignored. If you are a Conservative candidate, simply state bluntly that the rates must come down as high taxation is crippling the country. If you are a Labour candidate, say that there is room for economy in administration and, especially if the council has a Conservative majority, hint at inefficiency—if your party is in control, hint at it just the same but, if possible, infer that the officers are bureaucratic and dictatorial (they can't answer back, so you are fairly safe). Whether you are Conservative or Labour, then proceed to say what things ought to be done; don't mention that they will have to be paid for but, if cross-examined on this by an elector, indicate vaguely that once extravagance is checked (you will want to make use of this phrase, anyhow) there will be money to spare for your projects without increasing the rate. The elector, unless he is particularly dogged or clear-headed, will by this method gain the impression that he has been answered and that, in fact, the two contradictory statements are somehow complementary. That's all for now from

Your affectionate father,

J.A.G.G.

MISCELLANEOUS INFORMATION

RUNNING COST OF HOSPITALS

The sixth report from the Select Committee on estimates for the session 1956–57 deals comprehensively with the running costs of national health service hospitals. The report should be considered carefully by those concerned with this heavy part of expenditure amounting to some £335 millions for the current financial year. This is £15 millions more than 1955–56. The committee were satisfied that the cost of much of the improvements which have been effected in the standards of service since the new scheme came into operation have been largely offset by savings due to economies; and were able to say that they did not believe there was much, if any, gross inefficiency or obvious waste. But they were convinced that there is scope for bringing about true economies in the service in the sense that better value can be got for the money spent. It is emphasized that all in the hospital service should recognize that if expansion is to take place in one sector, a standstill or even a contraction may be unavoidable elsewhere. Everyone in the service must therefore be convinced that when he is able to achieve some saving he will enable someone else (if not himself) to carry out some improvements that might otherwise be deferred.

The committee were struck by evidence of difficulties experienced in obtaining suitable people for serving on management committees in some regions. The chairman of one board suggested that there has been too general a tendency to appoint members to management committees because of the interests they may represent. The committee recommend that boards, when appointing members of management committees should have regard to their general experience and ability as well as to the interest or local body that they may represent.

On financial control it is agreed that there are no wholly reliable tests of efficiency although factors such as bed occupancy, bed intervals, length of stay, rate of turnover and staff ratio may provide contributory evidence of the efficiency or inefficiency of a hospital or region. The committee recommend that the fullest use of departmental costing should be treated as a matter of the highest priority. As one way of reducing total hospital expenditure, attention is drawn in the report to the limited use made of amenity (s. 4) beds by paying patients in many hospitals. In 1955, for all hospitals, only 46 *per cent.* of these beds were so occupied although 33 *per cent.* were occupied by other patients. The committee recommend that the Minister should call upon all hospital authorities who have beds designated under s. 4 of the National Health Service Act, 1946, to do all they can to encourage the use of these beds by paying patients.

The committee were critical of the fact that sufficient use has not been made of joint group contracting and express the hope that the Minister will make still greater efforts to encourage the adoption by hospitals authorities of such arrangements where these appear economical. The association of hospital management committees in their evidence was in favour of joint purchasing schemes.

On the possibility of reducing the load on hospitals the Royal College of Physicians expressed the view that what should be the common task of providing the best service possible within the limits of the available resources is hindered because three sections of the national health service—general practice, the hospitals and the care of patients by local authorities—are separately financed and each is in a position to save at the expense of the other. The local authority could, in the view of the association, help to discharge patients quickly and especially by providing more residential homes but this service is paid for by the ratepayers "who let these people remain in their hospital beds." But it is accepted that many local authorities have gone a long way not only in arranging after-care for discharged patients but also in supplying home helps and nurses.

The committee specified as five main problems (1) the attendance at out-patient departments and clinics of persons who could have been examined and treated by general practitioners; (2) the continued treatment by consultants of patients who could have been referred back to general practitioners for treatment; (3) the admission of patients to hospital who could be treated as out-patients; (4) the retention of chronic sick patients in acute wards, because of the shortage of chronic beds; (5) the tragic position resulting from the inability to discharge some patients from hospital because other suitable care and accommodation are not available for them. It is stated that in 1955 there were 4,500 such patients in general hospitals and 10,000 old persons in mental hospitals whose degree of mental health was such that they could have been appropriately discharged if they had somewhere to go.

BLACKPOOL WEIGHTS AND MEASURES DEPARTMENT

Mr. W. A. Ladds, chief inspector to the county borough of Blackpool, in his report for the year ended March 31, records a marked improvement by shopkeepers in keeping level their self and semi-self indicating scales. For the benefit of the minority, however, he reminds traders that they should check that their scales are balanced and level each day. Of 68,087 appliances examined, 921 were found to be incorrect or not in compliance with the regulations. Generally speaking, the actual errors on most of the incorrect appliances were small and were due in the main to the normal wear and tear of trade use.

In common with many other inspectors, Mr. Ladds thinks that especially in view of the increase of self-service shops, the provisions of the Sale of Food (Weights and Measures) Act, 1926, and the Pre-packed Food (Weights and Measures: Marking) Order, 1950, should be extended to apply to fresh fruit and most vegetables, and various other articles of food.

Like Bedfordshire, Blackpool has found it of advantage to enter into reciprocal arrangements with another local authority. At the suggestion of the Lancashire county council an arrangement was made under which the inspectors of each authority could act within the area of the other. Inspectors will not ordinarily act outside their own area, but it can happen on occasion, when on inspection duties near the borders of the borough, that an inspector might be handicapped by being unable to follow a vehicle over the boundary, particularly when keeping observation on coal delivery vehicles and the like.

The danger arising when children make fireworks or otherwise dabble in explosives is illustrated by one or two cases related in this report. In one of these a 12 year old boy made up a firework based on what he had read in a chemistry book which he had won as a prize. He was severely injured. The most satisfactory feature of the case is that on representations being made to them the publishers of the book agreed to make certain small changes in it.

THE FINANCES OF THE RURAL DISTRICT OF BURNLEY IN 1956–1957

The rural district council of Burnley administers the local government services for which it is responsible over an area of 40,000 acres for a population of 16,300.

As a result of the revaluation rateable value increased to £196,000 and the poundage rate fell to 14*s.* 7*d.*, 10*s.* 11*d.* of which was levied to meet the requirements of Lancashire county council. The total rate is 1*s.* less than the average rate levied by 100 rural district councils included in the Return of Rates Levied issued by the Institute of Municipal Treasurers and Accountants. The treasurer of the authority, Mr. D. Cowgill, A.I.M.T.A., points out in his excellent introduction to the accounts, that although the poundage rate decreased the actual net produce of the rate increased, as compared with 1955–1956, by 10 *per cent.* for county council purposes, and 16 *per cent.* for rural district requirements.

Rate collection was excellent, apart from arrears due to valuation appeals. Normal arrears amounted to only £58.

Six thousand hereditaments out of 7,400 consist of dwelling-houses and account for just under half the total rateable value. The largest single group of houses consists of those with a rateable value of £10 and under: these number 2,400.

The council has built 184 houses and has a surplus of £1,300 on its housing revenue account. Rents contribute 60 *per cent.* of total housing costs, the balance being shared in the ratio of three to one by the national exchequer and the local ratepayers. Mr. Cowgill states that a rent review which was deferred during 1956–1957 is to be further considered so that any changes in rents may be effective from April 1, 1958. In the meantime the annual contribution of £1,100 from the rate fund has been continued.

The main items of expenditure on general rate fund account were in respect of sewerage and refuse collection. At the close of the year there remained in hand a balance of £25,000, largely represented by cash. The penny rate on general district account produces £790: the balance therefore represents a very considerable nest-egg.

The council own a water undertaking which produced a profit for the year of £760. The treasurer points out, however, that when the loan charges on certain new schemes have to be met it will be necessary to increase water charges. The water rate was revised from 3*s.* 4*d.* in the £ to 2*s.* 6*d.* in the £ from April 1, 1956.

Loan debt at the end of the year totalled £338,000 of which £271,000 was for housing and £7,000 for the water undertaking. Average rate of interest on advances from the loans pool was 4.9 *per cent.*

The council has established a repairs and renewals fund and a capital fund. The latter is financed by annual contributions equal to the produce of 1*d.* rate.

DERBYSHIRE CONSTABULARY : CHIEF CONSTABLE'S REPORT FOR 1956

This report, received somewhat late in 1957, shows that the actual strength of the force as compared with authorized establishment is the lowest of any county force in England and Wales. The chief constable notes that recruitment has been disappointing but the force is being, and intends to be, selective in its choice of candidates as it is considered that this is the only fair course to the men now serving and to those who will follow. The figures show that on January 1, 1957, the authorized establishment was 839 and the actual strength 674, leaving 165 vacancies. Thus the actual strength was just under 81 *per cent.* of the authorized establishment compared with an average of 92 *per cent.* for all counties and joint authorities. On average daily strength there were 1,045 persons per officer in Derbyshire compared with an average for the country of 807. The shortage of men has meant that in some cases a village has had to be deprived of its village constable and in his place a mechanized beat has been substituted, but the chief constable states that with the depleted strength there is no alternative. Housing difficulties have added to the problem and local councils have been informed, in some cases, that if they will give the police a house the chief constable will give them a policeman.

Recorded crimes for 1956 totalled 5,070. The total for 1955 was 4,670. Taking into account crimes undetected in the previous year which were detected in the year under consideration, the percentage of detections, 72·9, was the same for the two years. Of the 3,533 crimes detected in 1956, 1,551 were committed by juveniles. It is difficult to avoid the conclusion that so large a percentage of offences would not be committed by juveniles if their parents exercised anything like the control and supervision which they ought to, and one is forced to wonder whether juvenile courts, which deal in the main with such offenders, do all that they might to bring home to parents that it is their job to look after the proper upbringing of the children whom they have brought into the world. Whether it is a rich home or a poor one nothing can take the place of a home in which a child feels that he is loved and wanted and cared for.

As is often the case in a county force the worrying of livestock by dogs has caused much concern in Derbyshire. Eighty-nine sheep, 517 head of poultry and seven head of cattle and other animals were either killed or injured by dogs. The chief constable points out that 672 stray dogs were seized and of these only 347 were claimed by their " dog-loving " owners. With this in mind he comments on the outcry which there always is if a farmer ventures to shoot a dog found worrying his livestock.

Offences of driving while under the influence of drink totalled 52 in 1956, a decrease of 10 compared with the figure for 1955. Thirty-three of the 52 were private car drivers. There were 43 convictions, five dismissals and four committals for trial which had not been tried by the end of 1956.

The useful part which the press can play is recognized in the chief constable's foreword, in which he states that the press were exceedingly helpful throughout the year in " spotlighting traffic problems, boosting our accident prevention efforts and generally bringing to the notice of the public matters of concern and interest."

Considerable attention has been given to road safety problems. Police lecturers paid visits to 421 schools to give 869 talks and to examine children's cycles. Having regard to the manpower shortage the police must appreciate the relief provided by 129 school crossing patrols. This is an increase of 15 on the 1955 figure. Wireless patrol and mechanized beat cars covered a total of 912,037 miles, 72,900 more than in 1955. This must have been accounted for partly by the institution of three additional mechanized beats.

HELP FOR MENTAL DEFECTIVES

The Parliamentary Secretary to the Ministry of Health (Mr. Richard Thompson) in addressing the recent conference on mental deficiency held at Manchester by the National Association for Mental Health, referred to the recommendations of the Royal Commission as to the provision by local health authorities of occupation or training centres as part of their mental deficiency services. The people who attend these centres include some who as children have been excluded from school and some who have attended special or ordinary schools. The Commission took the view that the number of adults for whom local authorities may in future need to provide occupation centres, or workshops, may be very considerable and is almost certainly not less than the number of children for whom a different type of training is needed. Mr. Thompson said that great progress had been made since the start of the Health Service in the organization for training mental defectives at occupation centres. At the present time, in spite of financial stringency, the service has high priority for limited resources. In 1948, 100 centres existed, today over 300. In 1951, just over 4,000 boys and girls under 16 were receiving training; today well over 9,000. He said that because most resources had been applied to mentally handicapped children, the more complicated problems of adult defectives had not yet been properly studied. If training and social facilities could be provided for adults the experience so gained might considerably affect the training of children. With full employment and economic stringency it was difficult, said Mr. Thompson, to provide staff and buildings, but this need not prevent a start being made.

In the meantime some local health authorities, within the means at their disposal, are making additional provision for training defectives of all ages. For example, the Kent county council has recently opened a new centre for 60 people but the plans allow for expansion to greater numbers if necessary. To it will come defectives of various ages. About two-thirds of them will normally be children. Although they are not capable of benefitting from normal educational facilities they will receive training in the formation of good habits, in the use of their senses and the development of speech. They will also be shown how to use their hands at such tasks as sewing, basket making, weaving, simple carpentry and gardening.

At the Manchester conference the medical officer of health for Wolverhampton said many families rendered a great service to the community by looking after their own relatives who were mentally ill (we quote from *The Birmingham Post*). He suggested that local authorities should earmark accommodation where defectives living with relations could stay for short periods. He urged the need for closer co-operation between local authorities and the hospital services in exchanging information as to patients. Liaison was particularly valuable where the patients' progress suggested the likelihood of discharge. Dr. Galloway hoped, however, that care would always be taken in the discharge of patients from institutions bearing in mind that the price of freedom is eternal vigilance, for its cost can also be arson, illegitimacy, sexual offences and violence.

BIRMINGHAM WEIGHTS AND MEASURES DEPARTMENT

The scope of the functions of inspectors of weights and measures tends constantly to widen and the complications in the various appliances with which they have to deal continue to increase, thus making more and more demands upon staff. Mr. J. A. Birch, chief inspector for the city of Birmingham weights and measures department notes this in his annual report, and states that although in the past 50 years the population of the city has doubled and its area quadrupled, the staff increase has been only from 16 to 30. The institution of a five day week led to some re-arrangement of duties, but arrangements were made for the maintenance of an effective service for certain purposes on Saturdays.

Out of 39,414 weights examined, 3,477 were found to be deficient, but in most cases the deficiencies were small and due to normal wear and tear. Of 105,890 measures of capacity 299 were incorrect and of 1,980 measures of length 104 were incorrect.

Of 16,339 weighing instruments examined, 1,591 were found to be incorrect. Of these 233 had errors of balance against the seller and 373 against the purchaser, the remainder being below the standard of weighing performance required by the Board of Trade Regulations. There were some cases of vegetable scales having a substantial and well-established accretion of soil inside the scoop, a condition for which several greengrocers were cautioned and prosecuted. There were also cases of unjust coal yard scales, apparently due to faulty use and adjustment of parts. Coal is now so expensive that these errors may be hard on the customer. Offences by delivery men were numerous, though there was some improvement towards the end of the period covered by the report. It appears that such frauds on the customer are found more difficult to perpetrate and more likely

to be discovered than frauds upon the seller of the coal, and it is noteworthy that the seller was the victim in 40 *per cent.* of such fraud charges as compared with 15 *per cent.* during the previous year.

There is the frequent criticism of the practice of some butchers of ticketing meat with the price but without any statement of weight. It is recommended that the better practice of other butchers should be adopted and both weight and price be marked on the ticket.

The Merchandise Marks Act is sometimes useful in cases where the Weights and Measures Acts cannot be invoked. A prosecution was successfully brought for short weight in Christmas turkeys. Seven birds were found to have an average deficiency of one pound per bird, representing individual overcharges of between 3*s.* 6*d.* and 5*s.* Yet another example concerned the sale of wood logs. This was a prosecution relating to a false trade description contained in a newspaper advertisement in which bags were described as containing " approx. 56 *lb.*" It is the department's experience that " approximate " and " nominal " descriptions are often euphemistic, and in this case, two six-bag deliveries were checked and found to be less than 2¼ *cwt.* in each case, instead of the three *cwt.* which the purchasers had a right to expect. No scales were provided at the seller's premises, nor on the vehicle.

Another practice dealt with in this report is that of altering the content of pre-packed food packets without change of price which, as Mr. Birch points out, is a somewhat one-sided practice. As he says, " we are all familiar with advertisers' announcements of ' Increased weight '—of unspecified amount and usually in association with a more than proportionate increase in price—downward adjustments of weight take place much more discreetly, although they are far more numerous and significant."

Serious frauds are occasionally brought to light in connexion with the sale of sand and ballast. One prosecution referred to in this report resulted in the conviction of a haulier who was sent to prison for nine months. Mr. Birch refers to " what has become a familiar pattern in recent years, both in Birmingham and elsewhere, namely, the use of consignment notes bearing inflated particulars or relating to fictitious deliveries."

Birmingham now provides another example of useful reciprocal arrangements. The year 1956–57 was the first in which inter-area agreements operated with all adjoining authorities for the investigation of suspected offences involving circumstances occurring on both sides of the city boundary. The arrangements proved useful on several occasions, and there were many valuable exchanges of information.

NEW COURT HOUSE FOR RADSTOCK

The Secretary of State for the Home Office has agreed that work on the new court house at Radstock may start before March 31, and the magistrates' courts committee of the Somerset county council has decided to proceed at a cost of £17,000.

EMERGENCY LEGISLATION CONTINUANCE

The Supplies and Services (Continuance) Order, 1957 (S.I. 2056), Emergency Laws (Continuance) Order, 1957 (S.I. 2057); Patents (Extension of Period of Emergency) Order, 1957 (S.I. 2062), Registered Designs (Extension of Period of Emergency) Order, 1957 (S.I. 2061).

By the above orders certain defence regulations and other emergency enactments are continued in force for another year until December 10, 1958.

MAGISTERIAL LAW IN PRACTICE

The Western Morning News. November 5, 1957

FINED £1,405 FOR DUTY OFFENCES

Fines totalling £1,405, plus 25 guineas costs, were imposed at Bow Street (London) Magistrate's Court yesterday on George Bailey, of the Stores, Kenniford, near Exeter, for Customs offences.

There were 12 summonses in which Bailey was accused of dealing in 12 cameras and one lens on which duty had not been paid.

He pleaded guilty to all the summonses, and the magistrate (Mr. Bertram Reece), refusing an application for time to pay, fixed an alternative of one month's imprisonment on each summons, to run consecutively—12 months in all.

Mr. J. L. Bowen (prosecuting for the Customs and Excise) said inquiries had uncovered more than 70 deals, but of these only 12 were set out for prosecution.

" Fictitious Names "

Bailey had been employed as a salesman at different times by three of the largest firms of camera dealers in England. Part of his job was to buy cameras.

It was the prosecution's case that he had bought the cameras and lens, uncustomed, and passed them on to his firm, giving fictitious names and addresses for the vendors.

He paid the vendors in cash and the cheques drawn by his employers went into one of his own accounts. He had bank accounts in three different names.

" Made Nothing "

There was a previous conviction against him at Marlborough Street (London) in 1953 for customs offences.

Mr. J. Platts Mills (defending) said that Bailey had not made a penny out of the transactions. He had been told to " buy cameras and not ask too many questions," and that was what he did.

Whatever profits there were went to his employers. All the vendors wanted cash and did not want to wait for a cheque, so Bailey opened several accounts so that he could pay out cash and pay in the cheques which his employers drew.

In this case we are told that there were 12 summonses, that the fines totalled £1,405, plus £26 5*s.* costs, and that the defendant, in default of payment, was sentenced to one month's imprisonment in each case, the sentences to run consecutively, making 12 months in all. The conclusion can therefore be drawn that at least one of the fines must have exceeded £250.

Subsections (1) and (2) of s. 108 of the Magistrates' Courts Act, 1952, provide that consecutive terms of imprisonment imposed by a magistrates' court shall not exceed six months in all, unless the sentences include two or more for indictable offences dealt with summarily under s. 19, in which case the aggregate must not exceed 12 months. Subsection (3), however, which governs the position in this case, provides that " the limitations imposed by the preceding subsections shall not operate to reduce the aggregate of the terms that the court may impose in respect of any offences below the term which the court has power to impose in respect of any one of those offences." Subsection (5) provides that " for the purposes of this section a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of a sum adjudged to be paid by the conviction or for want of sufficient distress to satisfy such a sum."

The fraudulent evasion of duty is an offence against s. 304 of the Customs and Excise Act, 1952, which prescribes a penalty of three times the value of the goods or £100, whichever is the greater, or to imprisonment for a term not exceeding two years (limited to a term not exceeding 12 months on summary conviction by s. 283 (2)), or to both. The offence being punishable on summary conviction by more than three months imprisonment the defendant may claim to be tried by a jury, under s. 25 of the Magistrates' Courts Act, 1952.

Section 285 of the Customs and Excise Act, 1952, provides a special scale of imprisonment in respect of non-payment of any sum adjudged to be paid on summary conviction under the customs or excise Acts (including costs) as follows:

Where the amount of the sum adjudged to be paid by the conviction—	The said period shall be a period not exceeding—
exceeds £50 but does not exceed £100	six months
exceeds £100 but does not exceed £250	nine months
exceeds £250	12 months

Subsection (2) of s. 285 provides that " where, in any proceedings for an offence under the customs or excise Acts, a court of summary jurisdiction in Great Britain (*a*) orders a person to be imprisoned for a term in addition to ordering him to pay a penalty for the same offence; and (*b*) further (whether at the same time or subsequently) orders him to be imprisoned for a term in respect of such a non-payment or default as aforesaid, the aggregate of the terms for which he is so ordered to be imprisoned shall not exceed 15 months."

London Evening News. November 22, 1957.

TOO ENTHUSIASTIC PUNTER FINED

Horace James Hooker, 47, labourer, of Horatio Street, Bethnal Green, described as an over-enthusiastic punter, was fined 10s. at Old Street today for obstructing a police officer.

Hooker warned a street bookmaker of a police inspector's approach.

In *Bastable* v. *Little* (1907) 71 J.P. 52, it was held that a person warning motorists of a "police trap" was not guilty of obstructing the police in the execution of their duty, there being no evidence that cars were being driven at an illegal speed. In that case Lord Alverstone, L.C.J., and Darling, J., guarded themselves from saying that obstruction under the section must be physical obstruction.

In *Betts* v. *Stevens* (1910) 73 J.P. 486, *Bastable* v. *Little* was distinguished, and it was held that directly it was shown that an offence was being committed by a motorist in that he was exceeding the speed limit when an A.A. scout gave him warning, then the scout was obstructing the police. In that case, Bucknill, J., said "The result was that the operations of the police were rendered abortive by the act of the appellant. He intentionally and successfully prevented the police from obtaining evidence of the commission of an offence by the drivers of the cars, and in doing so he, in my opinion, wilfully obstructed the police in the execution of their duty."

In *Hinchcliffe* v. *Sheldon* [1955] 3 All E.R. 406; 120 J.P. 13, the appellant, who was the son of the licensee of an inn, arrived at the inn one night about 11.17 *p.m.* and found some police officers outside, who wished to enter the premises as they suspected that the licensee was committing an offence under s. 100 of the Licensing Act, 1953. The appellant shouted warnings to the licensee, who did not open the door till 11.25 *p.m.* The licensee was not found to be committing any offence, but under s. 151 of the Act of 1953 the police were entitled to enter for "the purpose of preventing or detecting the commission of any offence" against the Act. The appellant was convicted under s. 2 of the Prevention of Crimes Amendment Act, 1885, of wilfully obstructing a police officer in the execution of his duty. It was *held* that "obstructing" for the purposes of the section meant making it more difficult for the police to carry out their duties, and that as, under s. 151 of the Act of 1953, it was the duty of the police to enter licensed premises if they thought it likely that an offence was being committed, the appellant's conduct had made it more difficult for them to carry out that duty, and, therefore, the conviction was right.

In the course of his judgment, Lord Goddard, C.J., considered *Bastable* v. *Little* and *Betts v. Stevens.* He concluded his judgment by saying, "'Obstructing' means, for this purpose, making it more difficult for the police to carry out their duties. It is quite obvious that the appellant was detaining the police while giving a warning; he was making it more difficult for the police to get certain entry into the premises, and the justices were entitled to find as they did, and, therefore, the appeal is dismissed."

It is now clear that doing anything which makes it more difficult for a police officer to carry out his lawful duty is obstructing him, contrary to s. 2 of the Prevention of Crimes Amendment Act, 1885. (*See* also *Pankhurst and Haverfield* v. *Jarvis* (1910) 74 J.P. 64, and *Despard and Others* v. *Wilcox and Others* (1910) 74 J.P. 115.)

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

When Parliament reassembled after the Christmas Recess, the Secretary of State for the Home Department, Mr. R. A. Butler, answered a number of questions regarding the prison population. He said that in prisons of all types the total normal accommodation amounted to 17,098 places for men and 1,217 for women. On January 14, 1958, there were 18,470 men and 676 women. In the local cellular prisons for men there were 10,803 places and on January 14, there were in those prisons 13,179 men of whom 3,774 were lodged three in a cell. No women were lodged three in a cell.

He stated that in 1955 the daily average adult prison population was 16,943 men and 739 women. In 1956, it was 16,634 men and 668 women. The daily average adult population for 1957 was previously estimated at 17,580 men and 650 women. In 1957, the average weekly earnings of men prisoners was 2*s.* 6*d.* and of women prisoners, 1*s.* 11*d.*

In 1956, of 4,796 persons received into prison for failure to pay fines, 2,426 had not been given time to pay. The number of persons received into prison on committal by county courts in 1956 was 1,463, compared with an annual average of 319 during the period 1946–1950.

DISCHARGED PRISONERS

Mr. Elwyn F. Jones (West Ham, S.) asked the Secretary of State for the Home Department whether, in view of the anxieties expressed in the Report of the Council of the Central After-Care Association, for the year 1956, that the police functions which the society had to perform in order to give effect to the provisions of s. 29 of the Prison Act, 1952, was prejudicing the relationship of the society to the discharged prisoner, he would alter that procedure.

Mr. Butler replied that he had invited the Advisory Council on the Treatment of Offenders to consider that matter, and to let him have its views.

BORSTAL INSTITUTIONS

Mr. Elwyn Jones asked how many boys discharged from borstal institutions during the years 1956 and 1957 had no homes to go to on release; and what steps were being taken to deal with that problem.

Mr. Butler replied that in 1956, 185 borstal boys were homeless on discharge and a further 89 had no parental home and had to be placed with relatives. In 1957, the figures were 203 and 74. Responsibility for helping borstal boys on discharge rested with the borstal section of the Central After-Care Association, whose representatives interviewed all boys shortly after reception in a training institution. Homeless boys were referred to specialist officers who sought suitable lodgings for them if no home could be found with relatives.

LESBIAN PRACTICES

Mr. D. M. Keegan (Nottingham, S.) asked the Secretary of State if he would introduce legislation to make lesbian practices illegal.

Replying in the negative, Mr. Butler said he saw no reason to think that there were sufficient grounds to justify such action.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, January 21

TRUSTEE SAVINGS BANK BILL—read 2a.

RECREATIONAL CHARITIES BILL—read 2a.

Thursday, January 23

HOUSING (FINANCIAL PROVISIONS) BILL—read 2a.

HOUSE OF COMMONS

Tuesday, January 21

NEW TOWNS BILL—read 3a.

Wednesday, January 22

LITTER BILL—read 1a.

Friday, January 23

DOUBLE DEATH DUTIES BILL—read 2a.

NOW TURN TO PAGE 1

An application for consent to marry may be made to the court of summary jurisdiction of the district in which the person refusing consent resides. (Marriage Act, 1949, s. 3.)

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,—

THE MAGISTRATES' COURTS ACT, 1957

With reference to the first item in Notes of the Week published in the *Justice of the Peace and Local Government Review* dated December 7, 1957, the view held by me is that the Magistrates' Courts Act, 1957, lays down a completely new procedure with respect to the service of a summons and the proof of that service. The Magistrates' Courts Act, 1952, sets out an endorsement which must be completed on the service of a summons, this form providing for the summons to be delivered personally or by leaving it at the defendant's last known address. The 1957 Act compels the prosecutor in all cases to bring to the notice of the justices before the evidence is heard that the defendant is aware of the existence of process. The endorsement as laid down in the Magistrates' Courts Act, 1952, is then accepted as proof of service, if the endorsement is completed showing "personal service," but if the endorsement does not indicate personal service then the police must prove this service (r. 3, Magistrates' Courts Rules, 1957) and this proof of service is undertaken by a form of acknowledgement of the summons being left with the person accepting the summons on behalf of the defendant, and that person being informed that when the summons is handed to the defendant he should be instructed to sign the form, post it to the police at an address stamped on the form thereby indicating that he is aware process is in existence. If the person fails to acknowledge the summons and does not attend the hearing then that particular case is adjourned, and steps must be taken to ensure that the defendant is aware that a summons has been issued against him.

It will be noted that the rules do not lay down who is to prove service, but provided sufficient evidence can be given on oath whether it be by police officers or a private prosecutor, the summons is deemed to be properly served.

To apply the Magistrates' Courts Act, 1957, to the full, *i.e.*, to permit the person to plead guilty and not attend, the rules do set out a rather long procedure, comprising of three forms, namely, (i) a Notice setting out instructions, (ii) Statement of Facts and (iii) Notice to Cite Previous Convictions, but so far as this police division is concerned the procedure has presented no difficulties since it was adopted on October 1, 1957.

It is not laid down in the Act that if the system is adopted the whole set of forms need be used, *e.g.*, when the prosecutor prefers the defendant to appear at court, but keeping in mind that he may write a letter to the clerk to the justices (from which he is not precluded) pleading guilty to the offence because he knows his previous convictions cannot then be read out in court, it is in my opinion proper to serve the Notice to Cite Previous Convictions in the form set out in the schedule to the Magistrates' Courts Rules, 1957, in all cases where it is desired that the magistrates should be made aware of his previous convictions.

To conclude I do feel that although the new procedure is a help in relieving the time spent by police officers in magistrates' courts it has, so far as the administrative side goes, created an immense amount of clerical work calling for extra staff which is bound to be carried out by persons with good knowledge of police law and procedure.

Yours faithfully,
J. WOODMANSEY,
Chief Superintendent.

Lancashire Constabulary,
Divisional Headquarters,
Accrington.

[We are grateful for the above letter referring to our Note of the Week at 121 J.P.N. 785. We would point out that r. 3 of the Magistrates' Courts Rules, 1957, merely has the effect of applying to proof of service of a summons left at a defendant's place of abode, the provisions which by r. 76 (2) of the 1952 Rules have for years applied to a summons served by registered post, namely, that the service shall not be treated as proved unless it is proved that the summons has come to the defendant's knowledge. For this purpose any letter or other communication purporting to be written by him or on his behalf in such terms as reasonably to justify the inference that the summons came to his knowledge shall be admissible as evidence of that fact. A letter written to the clerk of the court serves this purpose just as well as does a letter written to the informant.

We agree that it is useful to serve the notice of previous convictions form in all cases which may be dealt with in the defendant's absence, whether under the new procedure or not.—*Ed., J.P. and L.G.R.*]

BILLS IN PROGRESS

1. **Marriage Acts Amendment Bill.** A Bill to enable certain places of worship to be registered for marriages less than 12 months after first being used for worship. [Private Members' Bill.]

2. **Litter Bill.** A Bill to make provision for the abatement of litter. [Private Members' Bill.]

3. **New Towns Bill.** An Act to increase the aggregate amount of the advances which may be made to development corporations under subs. (1) of s. 12 of the New Towns Act, 1946; and to amend s. 13 of that Act in respect of the reports and accounts to be laid before Parliament.

4. **Isle of Man Bill.** An Act to repeal certain enactments relating to the Isle of Man; to empower the Court of Tynwald to make provision with regard to customs and harbours; to provide for the payment to the Isle of Man of a share of certain duties; and for purposes connected therewith.

5. **Divorce (Insanity and Desertion) Bill.** A Bill to amend the law as to the circumstances in which, for the purposes of proceedings for divorce in England or Scotland, a person is to be treated as having been continuously under care and treatment and as to the effect of insanity on desertion. [Now amended by Standing Committee C.]

6. **Land Powers (Defence) Bill.** A Bill to provide for the termination of certain emergency powers and to make certain provision in substitution therefor; and for purposes connected with the matters aforesaid.

7. **Commonwealth Institute Bill.** A Bill to amend the law with respect to the Imperial Institute.

Where there's a will there's a way to help a child like this

This little girl, with her brother and two sisters, was consistently neglected by her mother. They were left alone in the house at night. The only furniture in their room was a bed and a cot. The mattresses on which they slept were filthy, the children were unwashed and their hair was tangled and matted.

Now the N.S.P.C.C. has come to their rescue and they are happy and well cared for. But they are only four among thousands who need help. When advising on wills and bequests don't forget the N.S.P.C.C. Every contribution, however small, helps its never-ending struggle against cruelty and neglect.

N·S·P·C·C

VICTORY HOUSE, LEICESTER SQUARE, LONDON, WC2

THE MEDICINE MAN

Our contemporary, *The Jerusalem Post*, has recently published some interesting details of certain criminal proceedings in the Jerusalem District Court. The defendant, Hassan abu-Massa, was a dervish of the El Huzeil tribe of Beduin, and the principal charge against him was one of manslaughter. The particulars of the indictment alleged that he choked a tribeswoman to death "in an attempt to exorcise a demon that had entered her body." There was a separate charge against the defendant, as a person without medical qualification, of unlawfully giving medical treatment to a patient, contrary to the Medical Practitioners' Ordinance. The defence to this second charge was both novel and ingenious. It was contended that the said Ordinance had no application to the case, since what the defendant was practising was not medicine, but sorcery.

As Sir James Frazer and other anthropologists have pointed out, the frontier between the two professions has not always been easy to demarcate. In our own day, prosecutions of the Peculiar People for manslaughter (on no greater justification than their strict adherence, in cases of sickness, to the explicit directions contained in Chapter V of the *Epistle of St. James*) are not unknown. Little more than 50 years ago, in the Preface to *The Doctor's Dilemma*, George Bernard Shaw demonstrated, at any rate to his own satisfaction, that the border-line, even in those days was by no means clearly drawn:

> "It may still be necessary, for some time to come, to practise on popular credulity, popular love and dread of the marvellous, and popular idolatry, to induce the poor to comply with the sanitary regulations they are too ignorant to understand . . . ridiculous incantations with burning sulphur, experimentally proved to be quite useless, because poor people are convinced, by the mystical air of the burning and the horrible smell, that it exorcises the demons of smallpox and scarlet fever, and makes it safe for them to return to their houses. To assure them that the real secret is sunshine and soap is only to convince them that you do not care whether they live or die, and wish to save money at their expense. So you perform the incantation; and back they go to their houses, satisfied."

It is instructive to compare this with the following passage from Chapter III of *The Golden Bough*:

> "The ancient Hindoos performed an elaborate ceremony, based on homoeopathic magic, for the cure of jaundice. Its main drift was to banish the yellow colour to yellow creatures and yellow things to which it properly belongs, and to procure for the patient a healthy red colour from a living vigorous source. With this intention a priest recited the spell . . . and, in order to infuse the rosy hue of health into the sallow patient, gave him water to sip which was mixed with the hair of a red bull. Then he daubed him from head to foot with a yellow porridge, set him on a bed, tied three yellow birds (a parrot, a thrush and a yellow wagtail) by means of a yellow string to the foot of the bed; then, pouring water over the patient, he washed off the yellow porridge, and with it, no doubt, the jaundice from him to the birds."

But we must not diverge from our dervish. By origin a Persian word, meaning "beggar," the name has come to denote a member of one of those religious fraternities among the Sufis of Islam, who gather round and follow some revered guide and teacher, receiving ritualistic and practical instruction at his hands. One need be no cynic to observe close parallels with the training of a medical student in modern times. The aspirant to the rank of dervish must pass through a severe noviciate—to begin with he must labour as a lay servitor of the lowest rank for a thousand and one days; for one day's lapse he must start again from the beginning. (In other words, he must undergo all the usual laboratory drudgery and hospital training; if he fails his "First Medical" he must take the course again.) Next the candidate must master the devotional exercises of his professional discipline, with their esoteric ritual—the whirling in the sacred dance, the howling, in unison, of a constant succession of traditional texts from the sacred lore. (Both these observances are regularly performed at the hospitals' rugby matches, where the two fifteens and their supporters enthusiastically participate in analogous rites.)

After qualification, there is equal similarity in methods of general practice. "My wife," declared a witness for the defence in the recent trial, "who was wont to sleep-walk and scream in the night, is to-day as healthy as a mare, since the dervish cured her by means of an incense-fire." Shock-treatment in cases of mental illness is a commonplace; the defendant himself gave evidence that, when the demon in possession of the woman was unusually stubborn, he would resort to "patting" the patient with his fist. Hypnotic and anaesthetising devices are employed in the profession with considerable success; the dervishes, their disciples and patients have been known, under the influence of the appropriate treatment, to eat live coals, handle red-hot iron, and walk barefooted over glowing ashes without any apparent ill-effects. Surgery, too, has its proper function; like the prophets of Baal (and the specialists of Harley Street) they gash themselves (and others) with knives "after their manner." There is, in fact, scarcely any branch of therapeutic treatment which has not its practitioners among the dervishes' profession.

The only institutions which do not seem to have been adopted among the latter are compulsory registration for practitioners and compulsory insurance for patients. These developments, no doubt, are only a matter of time. As Sir Patrick Cullen puts it, in Shaw's play:

> "Modern science is a wonderful thing. Look at all the great discoveries! Where are they leading to? Why, right back to my poor dear old father's ideas and discoveries! . . . Most discoveries are made regularly every 15 years, and it's fully 150 since yours was made last!"

A.L.P.

NOTICES

SOLICITORS' ARTICLED CLERKS' SOCIETY

Activities for February, 1958

Tuesday, 4: Any Questions and Discussion. At the Law Society's Hall starting at 6.30 *p.m.* with Natter and Noggin from 6.0 *p.m.* The panel will give its views on any questions put to it, followed by a general discussion.

Monday, 11: Great Ormond Street Hospital. Scottish Reels. At the Nurses' Home, 37 Guildford Street, W.C.1, starting at 9 *p.m.* and going on to 11 *p.m.* There is a professional instructor who will show any beginners the elementary steps. Refreshments are available.

Tuesday, 18: Concert Party. Brian Burrett is arranging a party to go to the Royal Choral Society performance of "Dream of Gerontius" at the Royal Albert Hall. Tickets are 4*s.* each. Anyone interested is invited to telephone him at his office—HOLborn 0874.

Tuesday, 25: Comedy on Record. At the Law Society's Hall at 7 *p.m.* with Natter and Noggin from 6. Amusing and unusual records will be played and members are invited to bring any of their own records to add to the already wide variety.

March

Tuesday, 4: New Members' Evening. At the Law Society's Hall, Chancery Lane, W.C.2, starting at 6.30 *p.m.* to which all members are invited. There will be refreshments available after which the president will answer any questions on the society and its work.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Food and Drugs—*Larvae in rice—Whether proceedings should be under s. 8 or s. 2 of the Food and Drugs Act*, 1955.

One of the inspectors of weights and measures for the county recently bought a packet containing one pound of ground rice at a shop in the county, for analysis purposes. The usual sampling procedure was carried out, and a third portion of the rice was sent to the public analyst. His report indicates that the rice sent to him for examination contained two live grubs (larvae).

It would seem that the rice was by reason of the infestation, unfit for human consumption, but the county medical officer of health is of the opinion that it would not be prejudicial or dangerous to health if consumed. Having regard to this fact and to the decisions given in cases brought under s. 8 of the Food and Drugs Act, 1955, your opinion is sought as to whether proceedings should be instituted under that section or under s. 2 of the Act.

If it is your opinion that any proceedings brought should be under s. 2, I shall be glad to have your views whether it is the nature, or substance, or quality of the food which is lacking.

FERNAL.

Answer.

If, as it seems, expert evidence would indicate that the rice was not unfit for human consumption simply because of the presence of the grubs, proceedings should be taken under s. 2 of the Act. This is in accordance with *Miller Limited* v. *Battersea Borough Council* [1956] 1 Q.B. 43; [1955] 3 All E.R. 279; 119 J.P. 569, (piece of metal in a bun), and *Turner & Son, Limited* v. *Owen* [1955] 3 All E.R. 565; 120 J.P. 15, (string in a loaf of bread). In *Newton* v. *West Vale Creamery, Co., Ltd.* (1956) 120 J.P. 318, it was held that the presence of a foreign body in food rendered that food not of the quality demanded, and we suggest that that is the appropriate statement of the offence in this case.

2.—Landlord and Tenant—*Rent restriction—Certificates of disrepair.*

A tenant makes application for a certificate of disrepair, one of the defects being a corroded soft water tank, which collects rain water from the roofs, such water being used presumably for washing purposes, the mains water with which the house is supplied being very hard. Before issue of notice on landlord by the local authority of its intention to issue a certificate of disrepair for this and other defects, landlord instructs contractor to carry out the repairs but to remove the soft water tank and provide drains to take the rain water to the public sewer, in lieu of repairing the soft water tank. It appears that if this action is taken, then the defects of repair will have been remedied and, if this is done before the certificate of disrepair is actually issued, then it should not be issued, or if done after issue the certificate would have to be cancelled by my council on receipt of the necessary application from the landlord. Do you agree with this view, and that the question of the provision of a soft water tank would be one to be dealt with by the county court?

CAZOCA.

Answer.

We are far from sure that the inefficiency of a soft water tank is ground for a certificate of disrepair, where there is an ordinary water supply. As events have turned out, we agree with your conclusion.

3.—Licensing—*Registered club—Supper hour extension—Continued operation in premises newly occupied by club after premises disqualified on striking off the register of previous occupier.*

Section 104 of the Licensing Act, 1953, sets out the provisions with regard to "supper-hour certificates," and subs. (5) says, in effect, that a certificate remains in force until terminated in accordance with that subsection. It may also be terminated by following the procedure in r. 7 of the Licensing Rules, 1921, but otherwise it seems that a certificate will remain in force indefinitely.

A registered club within this area possessed one of these certificates. Recently the club was struck off the register for misconduct, and the premises were disqualified for a period, but at the expiration of the disqualification period, a club registered at the same premises under a different name and with a different constitution, although I believe the promoters of the new club to be the same as those concerned with the old one. The structure of the premises and the catering supply and demand appear to have changed little or not at all, so that the club would appear still to have the necessary qualifications for a "supper-hour certificate."

The question now is whether the certificate which attached to the premises of the first club still attaches to the premises which now belong to the new club. I feel that it does, and that, until some person puts the question of withdrawal of the certificate before the licensing justices, the secretary of the club is entitled to avail himself of the provisions of s. 104, *ibid*, because the certificate relates to the structure and user of the premises and not personally to the secretary or his club. You have previously expressed the opinion that such a certificate does not require transfer when a justices' licence is transferred, for similar reasons.

OELSE.

Answer.

We think that there can be little doubt that the effect of the order disqualifying the premises for occupation and use for the purposes of a registered club under s. 144 (4), (5) of the Licensing Act, 1953, would be held to annul the situation that the provisions of s. 104 of the Act apply to the premises.

A fresh application should be made by the secretary of the new club and the licensing justices should satisfy themselves afresh that the premises are structurally adapted and *bona fide* used, or intended to be used, for the purpose of habitually providing, for the accommodation of persons frequenting the premises, substantial refreshment to which the supply of intoxicating liquor is ancillary.

The opinion which we now express is not, we think, inconsistent with our view that the law does not require a fresh application to be made where there is a transfer of a justices' onlicence: this because licensed premises continue as such without interruption notwithstanding a change of licence holder.

4.—Magistrates—*Practice and procedure—Committal for borstal training—Bail when no appeal pending.*

A youth aged 18 years pleaded guilty to a charge of larceny before a magistrates' court and was committed in custody to quarter sessions for sentence with a view to borstal training under s. 28, Magistrates' Courts Act, 1952. No appeal is pending. Has the High Court power to grant bail in these circumstances?

Reference has been made to *R.* v. *South Greenhoe JJ., ex parte Director of Public Prosecutions* [1950] 2 All E.R. 42; 114 J.P. 312, and *Re Whitehouse* [1951] 1 All E.R. 353; 115 J.P. 125.

The first case has no bearing on the point other than to emphasize that magistrates must commit in custody.

Whitehouse's case dealt with the position of a prisoner found guilty and committed to quarter sessions for sentence who had given notice of appeal against conviction. The Lord Chief Justice, while holding that s. 37 (1) (*a*), Criminal Justice Act, 1948, gave power to grant bail in that case, stated "Such an application is obviously one which ought to be exercised with extreme care and I hope that bail will only be granted in exceptional cases."

Can you suggest what would amount to exceptional circumstances when no appeal is pending?

H. WHITE ROSE.

Answer.

The High Court has no inherent jurisdiction to grant bail to a convicted person (*Ex parte Blyth* [1944] K.B. 532; 1 All E.R. 587), and s. 37 (1) (*a*) of the Criminal Justice Act, 1948, creates an exception which serves to meet cases such as committals to sessions for borstal training or for sentence, where the magistrates' court must commit in custody. Since the subsection is specifically limited to cases where notice of appeal against conviction or sentence has been given, it seems that it is inapplicable to a case such as the present, and that the High Court would not entertain the application.

5.—Magistrates—*Practice and procedure—Summons dismissed on preliminary point—Autrefois acquit.*

A person is brought before a court for a summary offence, the clerk reads out the offence with which the accused is charged and when asked how he wishes to plead, the accused pleads not guilty whereupon witnesses are ordered out of court. Before the

case for the prosecution is opened a submission is made by the accused's advocate upon a point in the statute under which the summons was issued. The prosecutor replied solely on the point submitted. The case was dismissed.

Can the person, summoned again upon the same facts, successfully plead *autrefois acquit* ? GIPON.

Answer.

If, as we assume, the summons was dismissed for want of form, there never has been an adjudication on the facts, and the defendant cannot plead *autrefois acquit* if he is later properly summoned on the same facts.

6.—Rating and Valuation—*Void allowance—Furnished flats left vacant.*

A large house has been converted into 11 flats, each separately assessed at a rateable value above the compounding limit. Some are let furnished, others let unfurnished, the owner (who resides in one flat) paying the rates. The owner has claimed a void allowance of rates on some of the furnished flats for unlet periods, stating that the furniture is removed and stored in outbuildings during the unlet periods. The flats are difficult to let and the owner has advertised and is prepared to let them unfurnished, if necessary. In view of the decision given in *Bayliss* v. *Chatters* [1940] 1 All E.R. 620, should the claim for a void allowance on the furnished flats for the unlet periods be resisted ? CARIS.

Answer.

As we have often said in several contexts, it is a question of fact whether a hereditament is beneficially occupied. The leading judgment in that case shows that the Divisional Court might be unwilling to reverse the magistrates upon the question of fact. But the facts before us seem rather stronger against the ratepayer than the facts in *Bayliss* v. *Chatters,* and we think the rating authority should not agree that beneficial occupation has ceased.

7.—Road Traffic Acts — *Speed limit — Passenger vehicle — "Adapted" to carry more than seven—Must adaptation have occurred after construction* ?

I would appreciate a definition of "adapted" as contained in para. 1 (1) of the amended sch. 1 to the Road Traffic Act, 1930. The circumstances leading me to pose this question are as follows.

Entirely opposing views on the interpretation of this part of the schedule are held by clerks to the justices of various courts in this traffic area in the application of s. 10 of the 1930 Act to passenger vehicles *constructed* solely for the carriage of more than seven passengers and of weight three *tons* or less. Some hold that if a vehicle of this description is found exceeding a speed of 30 miles *per hour* outside a built-up area, it is necessary, before an offence under s. 10 is proved, for evidence to be brought that *adaptation* to seat more than seven passengers occurred at some time *after* construction. Their view is that if a vehicle of, say, one and a half *tons* weight is constructed originally for the carriage of more than seven passengers it is not subject to a speed limit by reason of class or description. Such limit, they hold, exists only if the vehicle weighs more than three *tons* or was adapted for the carriage of more than seven subsequent to construction. The county prosecuting solicitor, incidentally, agrees with this opinion.

Is the writer correct in believing that passenger vehicles with seating capacity for more than seven and of less than three *tons* weight are at all times subject to a speed limit of 30 miles *per hour* ? Some magistrates' clerks incline to this view.

The schedule states:

	Maximum Speed Miles per Hour
"1. Passenger vehicles, that is to say vehicles constructed solely for the carriage of passengers and their effects, and dual purpose vehicles:	
(1) vehicles having an unladen weight exceeding three *tons,* or adapted to carry more than seven passengers exclusive of the driver	30

Dictionary definitions of adapt include "suit" and "fit." That of fit, "well-suited." This could mean that a vehicle constructed and well-suited to the carriage of passengers was adapted to their carriage. Can it not be said, therefore, that when a vehicle is constructed for passenger carrying, adaptation to carry so many passengers occurs when the requisite number of seats are installed ? If they then exceed seven surely the vehicle becomes subject to the provisions of s. 10 of the Road Traffic Act, 1930 ?

I add that in this neighbourhood many passenger vehicles with seats for 10 or 12 persons are appearing on the roads and are used mainly for conveyance of workmen by the larger firms engaged on construction projects. If the argument that it is necessary to prove adaptation after construction before such a vehicle is subject to a speed limit be sustained, one arrives at the absurd position when of two identical passenger vehicles one is restricted and the other not merely because the first may have started with a van body that has been replaced while the other has remained fitted with the original body of what is virtually a small bus.

It is not beyond possibility that through the use of ultra-light materials a passenger vehicle could be constructed to carry 30 or 40 passengers and still have a weight of three *tons* or less. Accepting the argument, this too would not be subject to the provisions of s. 10. Comment on this is that intention when the Act was made appears to have been that if a vehicle was capable of carrying more than seven passengers it should be restricted as to speed at all times.

I have had reference to the cases of *Hubbard* v. *Messenger* [1937] 4 All E.R. 48; *Keeble* v. *Miller* [1950] 1 All E.R. 261 and *Burrows* v. *Berry* [1949] 113 J.P.N. 492, but none settle the point at issue. I have access only to the briefest of references to *Fry* v. *Bevan* (1937) 81 S.J. 60, but these lead me to think this case may give more information on the subject. JOKAS.

Answer.

We think only the High Court can give a certain answer to this question. It is doing no violence to language to read "adapted" in this context as meaning "suitable," and we think that that is its appropriate meaning. If a passenger vehicle has an unladen weight exceeding three *tons* or its seating arrangements are such that it is suitable for carrying more than seven passengers, in addition to the driver, its speed limit is 30 miles *per hour.* To use a colloquial expression, this makes sense. It does not make sense, in our view, to construe the provision so that a vehicle can be originally constructed to carry an unlimited number of passengers and have no speed limit and yet be subject to the limit if the same result is achieved by subsequent alteration, using "adaptation" in that sense.

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